

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KENNETH LIGHTNER, #13-B-3352,

Plaintiff,

ANSWER

-against-

15-CV-6195

SUPT. WENDERLICH,

Defendant.

Defendant, by his attorney Eric Schneiderman, Attorney General of the State of New York, Hillel Deutsch, Assistant Attorney General, of counsel, as and for an Answer to the Amended Complaint filed in the above matter:

1. Denies the allegations of the Amended Complaint which allege in any manner that the actions of the Defendants resulted in a deprivation of the Plaintiff's constitutional rights.

2. Denies the commission or awareness of, or responsibility for, any acts of omission or commission relative to Plaintiff's allegations constituting a violation of any rule, regulation, directive, policy, or statute of the State of New York, or the United States, or the Constitution of either, which would confer jurisdiction upon this Court pursuant to 28 U.S.C. §§1331 and 1343.

3. Denies Plaintiff has alleged facts, actions, occurrences, or omissions sufficient to establish a claim for equitable or monetary relief, or a cause of action against the Defendant pursuant to 42 U.S.C. §1983.

4. Denies the allegations of the Fifth Claim and Eighth Claim of the Complaint. All other claims have been dismissed by the Court. (Docket No. 30)

5. Denies each and every other allegation not heretofore admitted, denied, or otherwise controverted.

**AS AND FOR A FIRST, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:**

6. The Complaint fails, in whole or in part, to state a claim upon which relief can be granted against it.

**AS AND FOR A SECOND, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:**

7. This action is barred, in whole or in part, by collateral estoppel or res judicata.

**AS AND FOR A THIRD, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:**

8. The Defendant, at all times relevant hereto, acted without malice and under the reasonable belief that his actions were proper and in accordance with existing law and did not violate any of the Plaintiff's rights.

9. Consequently, the Defendant is entitled to qualified immunity.

**AS AND FOR A FOURTH, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:**

10. That this action is barred, in whole or in part, by the Eleventh Amendment to the United States Constitution.

**AS AND FOR A FIFTH, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:**

11. Plaintiff has failed to exhaust administrative remedies as to some or all of the allegation of the Amended Complaint.

**AS AND FOR A SIXTH, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:**

9. The doctrine of *respondeat superior* does not apply in actions brought pursuant to 42 U.S.C. §1983, and bars relief to the Plaintiff.

WHEREFORE, Defendant prays that judgment be entered dismissing the Amended Complaint in all respects and that Defendant be awarded reasonable costs and attorneys' fees and for such other and further relief as may be just, proper, and equitable.

Dated: October 30, 2017
Rochester, New York

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for Defendant

s/ Hillel Deutsch
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CERTIFICATE OF SERVICE

I certify that on October 30, 2017, I electronically filed the foregoing Answer to Complaint on behalf of Defendant with the Clerk of the District Court using CM/ECF system, which sent notification of such filing to the following:

1. n/a

And, I hereby certify that I have mailed, by the United States Postal Service, the document to the following non-CM/ECF participant(s):

1. Abdul-Latif Lightner
f/k/a Kenneth J. Lightner
8505 Corona Street
District Heights, MD 20747

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for Defendants

s/ Hillel Deutsch
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